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CLERK OF THE COURT  
SUGAN Y. SUDHAR  
NORTHERN DISTRICT OF CALIFORNIA

**United States District Court**  
**Northern District of California**

MALIBU MEDIA, LLC,

Plaintiff,

vs.

JANE DOE, subscriber assigned IP address  
50.161.74.133

Defendant.

Case Number: 3:15-cv-05387-WHA

**MOTION TO QUASH SUBPOENA TO  
COMCAST**

*28*  
Date: April 29, 2016

Time: 8:00 am

Courtroom 8

Honorable William Alsup

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Good Cause Exists to Quash Subpoena

1. Jane Doe's IP Address is not a Static Address as Claimed by Plaintiff

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Permit Service on Defendant

V CONCLUSION

**I. STATEMENT OF ISSUES**

Should the court compel Comcast to disclose the subscriber's private information, when it is not reasonably likely that such disclosure is going to lead to the identity of the defendant? The answer is no. Comcast should not be disclosing this information. Here are the reasons why.

**II. INTRODUCTION**

Malibu Media LLC contends that defendant shared its movies using a single Internet Protocol ("IP") address over the time period January to October 2015. Thus, under Plaintiff's theory, whatever person was using the IP address at issue for file-sharing had consistent access to that IP address for at least nine months. Despite this, Plaintiff issued a subpoena to Comcast to identify the subscriber assigned to the IP address for only one single date – October 17, 2015. It is not reasonable, however, to conclude that the subscriber to which Comcast had assigned the IP address for a few days including October 17<sup>th</sup>, 2015, Jane Doe, is the Defendant, or that disclosure of her information to Malibu Media is likely to lead to the identity of Defendant.

Comcast uses dynamic IP addresses for residential wireless customers, meaning that it changes their IP addresses on a regular basis. Jane Doe is a residential wireless subscriber, and therefore is assigned a dynamic IP address. (Plaintiff is likely aware of this, which explains its subpoena

NOTICE OF MOTION TO QUASH SUBPOENA TO COMCAST

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1 tactic; had the subpoena asked Comcast to identify the single subscriber assigned the IP address  
2 for the time period from January through October, as contemplated in the Court's order (Dckt  
3 #10, 1:26-28), there would have been no responsive information, as numerous people would have  
4 been assigned the IP address over the nine month period.) Jane Doe is in the unfortunate position  
5 of having been assigned the IP address by Comcast in October. In the case where the infringement  
6 by Defendant is alleged to be "persistent", an early subpoena seeking subscriber information for a  
7 single date is not reasonable, and Jane Doe's personal information should not be disclosed to  
8 Malibu Media.

9  
10 This subpoena has already required many hours of trying to get information from Comcast and  
11 preparing this motion, as well as actual costs to sign up to the Identity Guard identity theft service  
12 that Comcast directed the subscriber to and is financially interested in, even though Comcast is  
13 the one that caused this problem by assigning an IP address that was being improperly used. If the  
14 subpoena is not quashed, to avoid being improperly named in the suit, Jane Doe will surely have  
15 to give even more personal information to Plaintiff to establish that she had nothing to do with  
16 and knows nothing about the alleged movie-sharing. Finally, because of the stage at which Jane  
17 Doe is being forced to defend herself, her ability to find an attorney or get attorney's fees if she  
18 finds one, is very limited. Jane Doe respectfully requests that the Court quash the subpoena to  
19 Comcast.

### 20 21 **III. FACTS**

22 1. Jane Doe is a Comcast subscriber, and received a letter from the Comcast Legal  
23 Response Center indicating that she was identified via her assigned IP address as part of a federal  
24 lawsuit that indicated that a device assigned the listed IP address was used to infringe the  
25 Plaintiff's copyrights on a single date at a specific time (10/17/2015 17:23:25 GMT).

26 2. Jane Doe received information from Comcast that she has dynamic IP addresses that, by  
27 law, change every week.

1           3. According to the Plaintiff's Complaint: "Defendant's Internet was used to infringe 25 of  
2 Plaintiff's copyrighted movies between 01/21/2015 and 10/17/2005. *See* Exhibit A to Complaint.  
3 Defendant's internet has been used to illegally download Plaintiff's movies over the course of  
4 several months. ... The length of time which Plaintiff's investigator recorded Defendant  
5 infringing Plaintiff's movies demonstrates that the infringer was not a mere guest or passerby. It  
6 was someone with access to Defendant's internet for a long period of time, consistently." (Dkt. 9,  
7 8:18-26.).

8  
9 Plaintiff claims that one single person has had the same IP address for at least 9 months, and that  
10 Jane Doe was the alleged repeat infringer.

#### 11 12 **IV. ARGUMENTS**

##### 13 **Good Cause Exists to Quash the Motion**

14  
15           1. Dynamic IP address. Through Comcast, Jane Doe has a dynamic IP address, not a static  
16 one. Unlike the necessarily static IP address of the Defendant whom the Plaintiff describes,  
17 residential wireless customers have dynamic IP addresses that change every week. This fact was  
18 verified through various communications with the Comcast Advanced Wireless Gateway Support  
19 Team, most recently on a phone call on Sunday, 6<sup>th</sup> March.

20           Exemplifying this clear technical fact, Jane Doe's dynamic IP address is now different  
21 from the one listed in the subpoena for both the private residential network and the public wifi  
22 hotspot (see Exhibits A and Exhibit C). Only businesses have a static address, as Comcast does  
23 not allow static addresses for residential wireless customers. A static address is an additional  
24 service that has a fee and which clearly appears on the Business subscriber contract. Jane Doe has  
25 a normal residential contract. With a dynamic IP address that changed weekly, she could not have  
26 been the infringer associated with the cited single IP address over many months, as alleged in the  
27 plaintiff's complaint.

1           2. Plaintiff's Subpoena is not Likely to Lead to Identifying Information That Will  
2           Permit Service on Defendant.

3           Even in the instance that Jane Doe's wireless network was assigned the IP address  
4 associated with the specific date and time of the single alleged copyright infringement cited in the  
5 subpoena, this in no way indicates that she was the alleged infringer.

6           Every Comcast router broadcasts two different wireless networks: a private residential  
7 network and a public wifi hotspot (Xfinity). The recently observed IP addresses of the public  
8 hotspot (50.141.34.191 on 03/04/2016, see Exhibit A, and 50.141.33.32 on 03/09/2016, see  
9 Exhibit B) are drawn from the same pool of IP addresses (50.\*.\*), assigned to Comcast Cable  
10 Communications Holdings, Inc, see Exhibit D) as the subpoenaed IP address (50.161.74.133). By  
11 contrast, the recently observed IP address of the private network (73.241.50.169 on 03/01/2016,  
12 see Exhibit C) is drawn from a different pool of IP addresses apparently assigned to a different  
13 entity affiliated with Comcast (73.\*.\*), assigned to Comcast IP Services, L.L.C., see Exhibit E).  
14 This strongly suggests that the subpoenaed IP address was actually assigned to the public hotspot,  
15 though only Comcast can tell for sure. Anyone with Comcast Xfinity credentials (his/her own or  
16 borrowed ones) could have accessed the internet and infringed the plaintiff's copyright using the  
17 public hotspot.

18           Even under the assumption that the private residential network was assigned the  
19 subpoenaed IP address, this still does not indicate that Jane Doe was the alleged infringer. The  
20 private residential network is shared among all roommates and visitors that have been granted  
21 access to the network. Furthermore, someone could have illicitly obtained the password necessary  
22 to access the residential network. Honorable Judge Otis D. Wright (Malibu Media v. John Does 1-  
23 10 (12-cv-3623)) underlines this point in one of his judgments:

24           "In lawsuits against Doe defendants, the plaintiff should ordinarily be allowed discovery  
25 to uncover their identities. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.1980). But discovery  
26 may be denied if it is (1) clear that discovery would not uncover the identities, or (2) that  
27 the complaint would be dismissed on other grounds. Id.

1 Under the first condition, Malibu represents that these ISP subscriber logs will lead to  
 2 the individual infringers. (Mot. 5.) Assuming that is true, the subscriber may not be the  
 3 actual infringer. For instance, a person may be the subscriber, but his roommate is the actual  
 4 infringer. And the subscriber may have his home network configured to allow visitors, including  
 5 strangers, to access the Internet—and use BitTorrent. (...)." (Dckt 7, 4:6-14).

6  
 7 The reasons above further demonstrate that revealing Jane Doe's identifying information  
 8 to the plaintiff would not provide sufficient information to identify the alleged infringer.

9  
 10 **V. CONCLUSION**

11 Given that (a) Jane Doe's internet service provider, Comcast, assigns dynamic IP  
 12 addresses and therefore would not have had a single IP address over multiple months, and (b) that  
 13 numerous people have access to that internet network, disclosure of her personal information via  
 14 the subpoena filed by the plaintiff would not lead to sufficient information to identify the alleged  
 15 infringer. Therefore, Jane Doe respectfully requests that the Court quash the subpoena to  
 16 Comcast.

17  
 18  
 19  
 20 Respectfully submitted,

21  
 22 Date: 3/10/2016

Signature: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

[signed]

24 Pro Se



## Where is Geolocation of an IP Address?

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IP or IPv6 Address

IP Lookup



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[u=https%3A%2F%2Fwww.myiplocator.net%2F](https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.myiplocator.net%2F))

**t** (<https://twitter.com/intent/tweet?text=What%20Is%20My%20IP%20Address%3F%20-%20MyIPLocator&url=https%3A%2F%2Fwww.myiplocator.net%2F>)

**g+** (<https://plus.google.com/share?url=https%3A%2F%2Fwww.myiplocator.net%2F>)

<https://whois.arin.net/rest/net/NET-50-128-0-0-1>

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CIDR	50.128.0.0/9
Name	CCCH3-4
Handle	NET-50-128-0-0-1
Parent	NET50 ( <a href="#">NET-50-0-0-0-0</a> )
Net Type	Direct Allocation
Origin AS	AS7922
Organization	Comcast Cable Communications Holdings, Inc ( <a href="#">CCCH-3</a> )
Registration Date	2010-10-21
Last Updated	2010-10-21
Comments	
RESTful Link	<a href="https://whois.arin.net/rest/net/NET-50-128-0-0-1">https://whois.arin.net/rest/net/NET-50-128-0-0-1</a>
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See Also	<a href="#">Related organization's POC records.</a>
See Also	<a href="#">Related delegations.</a>

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## WHOIS-RWS

## Network

Net Range	73.0.0.0 - 73.255.255.255
CIDR	73.0.0.0/8
Name	CABLE-1
Handle	NET-73-0-0-0-1
Parent	NET73 (NET-73-0-0-0-0)
Net Type	Direct Allocation
Origin AS	
Organization	Comcast IP Services, L.L.C. (CISL-5)
Registration Date	2005-04-19
Last Updated	2013-12-19
Comments	
RESTful Link	<a href="https://whois.arin.net/rest/net/NET-73-0-0-0-1">https://whois.arin.net/rest/net/NET-73-0-0-0-1</a>
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SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Pro Se

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MALIBU MEDIA, LLC,

Plaintiff(s),

vs.

JANE DOE, subscriber assigned IP address  
50.161.74.133

Defendant.

) Case Number: 3:15-cv-05387-WHA

) **DECLARATION OF**

) **IN SUPPORT OF MOTION TO QUASH**  
) **SUBPOENA TO COMCAST**

DECLARATION OF [REDACTED]

CASE NO. 3:15-cv-05387-WHA

PAGE NO. 1 OF 3

1 In support of Defendant's Motion to Quash Subpoena to Comcast, I, [REDACTED]  
2 declare as follows:

3 1. I am the Defendant. I am a Comcast subscriber. I submit this declaration in  
4 support of the attached Motion to Quash Subpoena to Comcast. I received information from  
5 Comcast that I have dynamic IP addresses that, by law, change every week. I recognize that  
6 multiple individuals, both known and possibly unknown to me, have access to internet via the IP  
7 addresses associated with my Comcast internet router.

8 2. I have personal knowledge of all facts stated in this declaration, and if called to  
9 testify, I could and would testify competently thereto.

10 3. Attached hereto as Exhibit A is a copy of the internet webpage  
11 (<https://www.iplocation.net>) identifying the IP address associated with my router via the public  
12 wifi hotspot (Xfinity) service on 3/4/2016.

13 4. Attached hereto as Exhibit B is a copy of the internet webpage  
14 (<https://www.iplocation.net>) identifying the IP address associated with my router via the public  
15 wifi hotspot (Xfinity) network on 3/9/2016.

16 5. Attached hereto as Exhibit C is a copy of the internet webpage  
17 (<https://www.myiplocator.net>) identifying the IP address associated with my router via the  
18 private residential network on 3/1/2016.

19 6. Attached hereto as Exhibit D is a copy of the internet webpage  
20 (<https://whois.arin.net/rest/net/NET-50-128-0-0-1>) identifying the pool of IP addresses  
21 associated with the IP address listed in the subpoena as well as the two IP addresses associated  
22 with my public wifi hotspot (Xfinity) network on two different dates, as identified in exhibits A  
23 and B.

24 7. Attached hereto as Exhibit E is a copy of the internet webpage  
25 (<https://whois.arin.net/rest/net/NET-73-0-0-0-1>) identifying the pool of IP addresses associated  
26 with an IP address assigned to my private residential network, as identified in exhibit C.  
27

28  
DECLARATION OF [REDACTED]

1 I declare under penalty of perjury that the foregoing is true and correct and that this  
2 declaration was executed on 03/10/2016.

3  
4 Date: 03/10/2016

Signature: \_\_\_\_\_

5 By: \_\_\_\_\_

[signed]

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DECLARATION OF \_\_\_\_\_

CASE NO. 3:15-cv-05387-WHA

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4/3/2016

IP Location Finder - Geolocation

Exhibit A

<https://www.iplocation.net/>

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**t** ([https://twitter.com/intent/tweet?text=What%20Is%20My%20IP%20Address%3F%20-](https://twitter.com/intent/tweet?text=What%20Is%20My%20IP%20Address%3F%20-%20MyIPLocator&url=https%3A%2F%2Fwww.myiplocator.net%2F)  
[%20MyIPLocator&url=https%3A%2F%2Fwww.myiplocator.net%2F](https://twitter.com/intent/tweet?text=What%20Is%20My%20IP%20Address%3F%20-%20MyIPLocator&url=https%3A%2F%2Fwww.myiplocator.net%2F))

**g+** (<https://plus.google.com/share?url=https%3A%2F%2Fwww.myiplocator.net%2F>)

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Handle	NET-73-0-0-0-1
Parent	NET73 ( <a href="#">NET-73-0-0-0-0</a> )
Net Type	Direct Allocation
Origin AS	
Organization	Comcast IP Services, LLC. ( <a href="#">CISL-5</a> )
Registration Date	2005-04-19
Last Updated	2013-12-19
Comments	
RESTful Link	<a href="https://whois.arin.net/rest/net/NET-73-0-0-0-1">https://whois.arin.net/rest/net/NET-73-0-0-0-1</a>
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**Case number:** 3:15-cv-05387-WHA

**What document was served?** (Write the full name or title of the document or "Plaintiff's Opposition to Defendant's Motion for Summary Judgment.")

Defendant's Motion to Quash Subpoena to Comcast; Declaration of Susan

Title(s):

Rebellion in Support of Motion to Quash Subpoena to Comcast; Proposed Order Granting Motion to Quash Subpoena to Comcast

**How was the document served?** (Check one.)

- ☒ Placed in U. S. Mail  
☐ Sent by fax  
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☐ Sent by delivery service (e.g., FedEx or UPS)

**To whom was the document sent?** (Write the full name, address, and fax number of everyone who was sent the document. Usually, they will be the lawyers for the opposing parties.)

Brenna E. Erlbaum, Brian Heit

Heit Erlbaum, LLP

501-I South Reino Rd #344

Newbury Park, CA 91320

**When were the documents served?** (When were they mailed, faxed, or delivered?)

Date: 3/10/2016

**Who served the documents?** (Whoever puts it into the mail, faxes, hand-deliveres, or sends by delivery service should print his/her name, address and sign. You can also do this yourself.)

I declare under penalty of perjury under the laws of the United States of America that the information in this certificate of service is true and correct.

Signature:

Printed name:

Address:

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MALIBU MEDIA, LLC,

Plaintiff(s),

vs.

JANE DOE, subscriber assigned IP address  
50.161.74.133

Defendant.

) Case Number: 3:15-cv-05387-WHA

) **[PROPOSED] ORDER GRANTING**

) **MOTION TO QUASH SUBPOENA TO**  
) **COMCAST**

Having considered the papers, and finding that good cause exists, Defendant's  
Motion to Quash Subpoena to Comcast is GRANTED.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
United States District/Magistrate Judge